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**OFFICE OF PETITIONS**

In re Application of :  
Adam Almen :  
Application No. 10/829,544 : ON PETITION  
Filed: April 22, 2004 :  
Attorney Docket No.:2010.3-US-01 :  
Title of Invention: APPARATUS AND :  
METHOD FOR MONITORING HEART RATE :

This is a decision on the petition filed August 13, 2004, requesting in effect, that a Notice to File Omitted Items in a Nonprovisional Application ("Notice") mailed August 3, 2004, be withdrawn.

The application was filed on April 22, 2004. However, on August 3, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice stating that the application had been accorded a filing date of April 22, 2004 but figure 19 as described in the specification appeared to have been omitted.

In response, the present petition was filed wherein Petitioner contends figure 19 was filed on April 22, 2004. In support, the petition is accompanied by a copy of applicant's return postcard which lists 19 sheets of drawings. The petition is further accompanied by a copy of figure 19 as described in the specification.

Applicant's postcard receipt is prima facie evidence that 19 sheets of drawings, including figure 19 were received on April 22, 2004, but one page containing figure 19 is not present in the file. Hence, it is clear that the papers for this application were mishandled by the Office. Therefore, it is concluded that figure 19 was received on April 22, 2004, as shown in counsel's file, and later misplaced in the office.

The petition is Granted. No petition fee is due. Accordingly, deposit account 50-1038.

Since figure 19 as described in the specification cannot be located in the Office, figure 19 supplied on August 13, 2004, will be used for processing and examination purposes.

The application will be returned to the Office of Initial Patent Examination for further processing with a filing date of April 22, 2004, using substitute figure 19 supplied on August 13, 2004.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.



Charlema R. Grant  
Petitions Attorney  
Office of Petitions